

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ROLLANDO SOTO MARTINEZ,
Minor.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
October 11, 2005

Petitioner-Appellee,

v

RAYMOND MARTINEZ,

Respondent-Appellant.

No. 262469
Mason Circuit Court
Family Division
LC No. 03-000125-NA

Before: Talbot, P.J., and White and Wilder, JJ.

MEMORANDUM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(a)(ii), (g), and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

First, we conclude that MCL 712A.19b(3)(a)(ii) does not apply to the facts of this case. The trial court clearly erred in finding that petitioner presented clear and convincing evidence to support this ground for termination of respondent's parental rights.

We further find, however, that the trial court did not clearly err in finding that the statutory grounds for termination set forth in MCL 712A.19b(3)(g) and (j) were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence clearly demonstrated that respondent provided an unsuitable home for the child before he was incarcerated in September 2003. In addition, respondent's incarceration and criminal involvement would prevent him from properly caring for his child within a reasonable time, considering the child's age and need for permanency. Thus, the trial court did not err in terminating respondent's parental rights to the child.

Finally, we find no merit in respondent's argument that the trial court erred in denying his motion to enforce the stipulation attempting to delay any adjudication or disposition hearings until he was released from prison. The court essentially treated the motion as a motion for a rehearing of the stipulation issue. Upon a rehearing, the court has the authority to "affirm,

modify, or set aside” an order. MCL 712A.21. By denying respondent’s motion to enforce the stipulation and ruling that “the stipulation is not valid,” the trial court essentially set aside the stipulated order. Furthermore, an adjudication need not be held against both parents before a disposition may be made regarding the child. *In re CR*, 250 Mich App 185, 205; 646 NW2d 506 (2002).

Affirmed.

/s/ Michael J. Talbot

/s/ Helene N. White

/s/ Kurtis T. Wilder